

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2020-0025
)	
Kronebusch Industries, LLC d/b/a)	Proceeding to Assess a Civil Penalty
AKE Safety Equipment)	
Rochester, Minnesota,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Kronebusch Industries, LLC d/b/a AKE Safety Equipment (AKE), a limited liability corporation doing business in Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In accordance Section 611 of the CAA, EPA promulgated the requirements for the Labeling of Products Using Ozone-Depleting Substances (Labeling Requirements), found in the Code of Federal Regulations at 40 C.F.R. Part 82, Subpart E.

10. The Labeling Requirements, at 40 C.F.R. § 82.100, state that the purpose of the subpart is to require warning statements on containers of, and products containing or manufactured with, certain ozone-depleting substances, pursuant to section 611 of the CAA, as amended.

11. The Labeling Requirements, at 40 C.F.R. § 82.102(a), state that, for any substance designated as a class I substance after February 11, 1993, the applicable date of the requirements of 40 C.F.R. § 82.102(a) is one year after the designation of the substance as a class I substance.

12. The Labeling Requirements, at 40 C.F.R. § 82.102(a)(1) and (2) state that the requirements of Subpart E apply to all containers in which a class I substance is stored or transported and all products containing a class I substance.

13. The Labeling Requirements, at 40 C.F.R. § 82.104 (a) states “Class I substance” means any substance designated as class I in 40 C.F.R. Part 82, appendix A to subpart A,

including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by the Agency at a later date.

14. The Labeling Requirements, at 40 C.F.R. § 82.104(r) states “Product” means an item or category of items manufactured from raw or recycled materials, or other products, which is used to perform a function or task.

15. The Labeling Requirements, at 40 C.F.R. § 82.104 (s) states “Product containing” means a product including, but not limited to, containers, vessels, or pieces of equipment, that physically holds a controlled substance at the point of sale to the ultimate consumer which remains within the product.

16. The Labeling Requirements, at 40 C.F.R. § 82.104 (aa) states “Warning label” means the warning statement required by section 611 of the Act. The term warning statement shall be synonymous with warning label for purposes of this subpart.

17. Halon 1211 (CF₂ ClBr-Bromochlorodifluoromethane) is designated as a Class I Controlled Substance per 40 C.F.R. Part 82, Appendix A to Subpart A, effective May 10, 1995. See 60 FR 24986.

18. The Labeling Requirements, at 40 C.F.R. § 82.106 (a) provides that unless otherwise exempted by Subpart E, each container or product identified in § 82.102 (a) or (b) shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [or Manufactured with, if applicable] [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

19. The Labeling Requirements, at 40 C.F.R. § 82.106 (b) list exemptions from the warning label requirements of 40 C.F.R. § 82.106 (a).

20. The Labeling Requirements, at 40 C.F.R. § 82.124 (a)(1)(i) provides that Applicable May 15, 1993, or one year after the designation of a substance as a class I or class II substance unless otherwise specified in the designation, no container or product identified in §82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.106(a), unless an exemption applies.

21. In accordance with Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart H, applicable to Halon Emissions Reduction.

22. Subpart H, at 40 C.F.R. § 82.250(a), provides that the purpose of Subpart H is to reduce the emissions of halon in accordance with section 608 of the Clean Air Act by banning the manufacture of halon blends; banning the intentional release of halons during repair, testing, and disposal of equipment containing halons and during technician training; requiring organizations that employ technicians to provide emissions reduction training; and requiring proper disposal of halons and equipment containing halons.

23. Subpart H, at 40 C.F.R. § 82.250(b), provides that the subpart applies to any person testing, servicing, maintaining, repairing or disposing of equipment that contains halons or using such equipment during technician training. Subpart H also applies to any person disposing of halons; to manufacturers of halon blends; and to organizations that employ technicians who service halon-containing equipment.

24. Subpart H, at 40 C.F.R. § 82.260, states “Halon” means any of the Class I, Group II substances listed in subpart A, appendix A of 40 C.F.R. Part 82. This group consists of the

three halogenated hydrocarbons known as Halon 1211, Halon 1301, and Halon 2402, and all isomers of these chemicals.

25. Subpart H, at 40 C.F.R. § 82.260, states “Halon-containing equipment” means equipment used to store, transfer, and/or disperse halon.

26. Subpart H, at 40 C.F.R. § 82.260, states “Person” means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

27. Subpart H, at 40 C.F.R. § 82.260, states “Technician” means any person who performs testing, maintenance, service, or repair that could reasonably be expected to release halons from equipment into the atmosphere. Technician also means any person who performs disposal of equipment that could reasonably be expected to release halons from the equipment into the atmosphere. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

28. Subpart H, at 40 C.F.R. § 82.270 (b), provides that effective April 6, 1998, no person testing, maintaining, servicing, repairing, or disposing of halon-containing equipment or using such equipment for technician training may knowingly vent or otherwise release into the environment any halons used in such equipment.

29. Subparts E and H apply to AKE because AKE manufactures, sells and services equipment that contains Halon 1211.

30. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015, and \$48,192 per day of violation up to a total of

\$385,535 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

31. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

32. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

33. AKE owns and operates a business engaged in the manufacture of fire extinguishers, with headquarters at 32 Woodlake Drive, Rochester, Minnesota.

34. AKE is a "person" as defined in Subpart H, at 40 C.F.R. § 82.260.

35. AKE sells a fire extinguisher product named STOP-FYRE® in various sizes.

36. AKE's STOP-FYRE® product meets the definition of "product" as defined in Subpart E, at 40 C.F.R. § 82.104(r).

37. AKE's STOP-FYRE® product contains Halon 1211.

38. AKE's STOP-FYRE® product is not labeled with the warning statement required by 40 C.F.R. § 82.106(a).

39. None of the exemptions from the warning label requirements of 40 C.F.R. § 82.106 (a), listed at 40 C.F.R. § 82.106 (b), apply to AKE's STOP-FYRE® products.

40. AKE’s failure to properly label its STOP-FYRE® product is a violation of 40 C.F.R. § 82.106(a).

41. In a series of promotional videos on its website, representatives of AKE released the contents of STOP-FYRE® for demonstration purposes.

42. AKE’s prior release of halons into the environment from its STOP-FYRE® product is a violation of Subpart H, at 40 C.F.R. § 82.270 (b).

Civil Penalty

43. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and AKE’s cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$52,345.

44. Respondent must pay the \$52,345 civil penalty in four installments with interest as follows:

<i>Installment</i>	<i>Due By</i>	<i>Payment amount</i>	<i>Principal</i>	<i>Interest</i>
Payment #1	August 15, 2020	\$13,304.35	\$13,086.25	\$218.10
Payment #2	November 15, 2020	\$13,304.35	\$13,086.25	\$218.10
Payment #3	February 15, 2021	\$13,304.35	\$13,086.25	\$218.10
Payment #4	May 15, 2021	\$13,304.35	\$13,086.25	\$218.10

Respondent must pay the installments by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, Missouri 63197-9000

45. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Cynthia A. King
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
King.cynthia@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

46. This civil penalty is not deductible for federal tax purposes.

47. If Respondent does not pay timely any installment payment as set forth in paragraph 44, above, the entire unpaid balance of the civil penalty and any amount required by paragraph 48, below, shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

48. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a

quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

49. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and tkozak@ake.com (for Respondent).

50. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

51. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

52. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

53. Respondent certifies that it is complying fully with 40 C.F.R. Part 82, Subpart E and Subpart H of the CAA.

54. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

55. The terms of this CAFO bind Respondent, its successors and assigns.

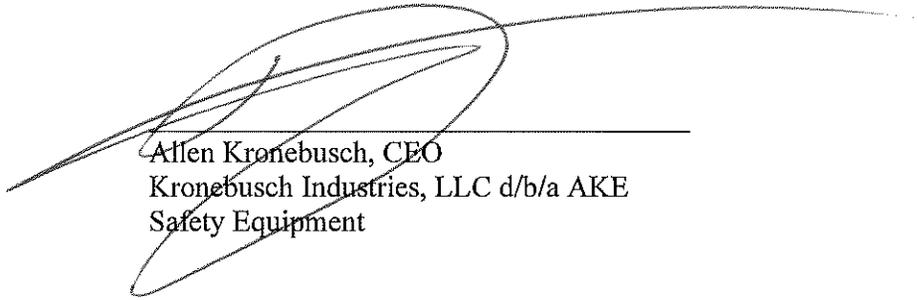
56. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

57. Each party agrees to bear its own costs and attorney's fees in this action.
58. This CAFO constitutes the entire agreement between the parties.

**KRONEBUSCH INDUSTRIES, LLC d/b/a
AKE SAFETY EQUIPMENT, Respondent**

6/15/20

Date



Allen Kronebusch, CEO
Kronebusch Industries, LLC d/b/a AKE
Safety Equipment

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

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Date: 2020.06.19
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Date

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: AKE Safety Equipment
Docket No. CAA-05-2020-0025

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5